Supreme Court, U.S.
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No. 01-

IN THE

# Supreme Court of the United States

RICHARD JEWELL,

*Petitioner,*

*v.*

COX ENTERPRISES, INC., *et al.*,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

Today's media era is an era of massive media coverage of all major events of public interest and concern. Almost all of these events involve private individuals. This case arises out of the media coverage of the bombing of Centennial Olympic Park during the 1996 Summer Olympics in Atlanta, Georgia. That event involved hundreds of private citizens, including the private security guard who first spotted the bomb and helped evacuate many people from the park. Ignoring established precedent of this Court, the Georgia Court of Appeals elevated the security guard from the status of private figure to limited-purpose public figure in a defamation action because his acts were heroic and because the media sought him out for interviews to discuss the bombing. In a holding so broad that all newsworthy individuals involved in events of public interest and concern are converted to limited-purpose public figures unless they reject any role in any public debate about the event, the Georgia Court of Appeals' opinion chills the free speech rights of private citizens, threatens the media's ability to obtain first-hand information from those citizens and spells the death of state defamation law.

The questions presented are:

(1) Whether the classification of an involuntary public figure in a defamation action exists beyond the hypothetical existence attributed to it in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

(2) Whether a private individual who is involuntarily involved in or associated with a matter that attracts public attention is converted into a voluntary limited-purpose public figure in a defamation action as a consequence of his participation in print and broadcast interviews requested by the media to obtain information about the newsworthy event.

## LIST OF PARTIES BELOW

In addition to the parties reflected in the caption, defendants in the proceedings below include Kathy Scruggs (reporter and staff writer for the Atlanta Journal-Constitution), Ron Martz (reporter and staff writer for the Atlanta Journal-Constitution), Kent E. Walker (summer intern and staff writer for the Atlanta Journal-Constitution), Christy Oglesby (reporter and staff writer for the Atlanta Journal-Constitution), Maria Elena Fernandez (reporter and staff writer for the Atlanta Journal-Constitution), Christina Headrick (summer intern and staff writer for the Atlanta Journal-Constitution), Macon Morehouse (reporter and staff writer for the Atlanta Journal-Constitution), Dave Kindred (sports columnist for the Atlanta Journal-Constitution), John Walter (managing editor of the Atlanta Journal-Constitution), Rochelle Bozman (assistant editor for the Atlanta Journal-Constitution), Bert Roughton, Jr. (assistant editor for the Atlanta Journal-Constitution), Thomas Oliver (assistant editor for the Atlanta Journal-Constitution) and Ron Martin (editor of the Atlanta Journal-Constitution). On September 2, 2001, Kathy Scruggs died, and a motion to substitute Lewis Lanier Scruggs, Sr. as a party-defendant in his capacity as the duly appointed Administrator of the Estate of Kathy Scruggs is pending in the trial court.

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Petitioner Richard Jewell respectfully petitions for a writ of certiorari to review the October 10, 2001 opinion and judgment of the Court of Appeals of the State of Georgia in the above-captioned proceeding.

## OPINIONS BELOW

The opinion and judgment of the Georgia Court of Appeals, *Jewell v. Cox Enterprises, Inc., et al.*, No. A01A1565 (Ga. Ct. App. Oct. 10, 2001), is reported at 251 Ga. App. 808, 555 S.E.2d 175 and is reprinted at App. 1a. The October 5, 1999 Order of the State Court of Fulton County, State of Georgia, is reported at 27 Media L. Rep. 2370 and is reprinted at App. 28a.

## STATEMENT OF JURISDICTION

The judgment of the Georgia Court of Appeals was entered on October 10, 2001. The Georgia Supreme Court denied the petition for a writ of certiorari on February 11, 2002. (App. 42a). Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL PROVISIONS INVOLVED

This Petition addresses questions concerning classifications of plaintiffs in defamation cases and their interaction with First Amendment freedoms of speech and of the press. The First Amendment to the United States Constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend I.

## STATEMENT OF THE CASE

This libel case arises from newspaper coverage by Respondents[1] of the July 27, 1996 bombing in Atlanta's Centennial Olympic Park and the subsequent investigation of Petitioner Richard Jewell in connection with the bombing. The blast killed one person and injured 110.

1. Before the bombing, Petitioner was an ordinary citizen who was unknown to the public. At the time of the bombing, Petitioner was working in the park during the Games of the XXVI Olympiad as a privately employed security guard. AT&T was the private corporation that hired private security for the park. Minutes before the explosion, in the routine performance of his job responsibilities, Petitioner spotted a suspicious and unattended package at the base of the five-story AT&T light and sound tower to which he was assigned to provide security. Petitioner immediately reported the existence of the package to law enforcement authorities pursuant to security protocol. At almost the same time as Petitioner reported the package to authorities, an anonymous 911 emergency call was received by police stating in effect that a bomb had been placed in the park and it would explode in thirty minutes. At a time when Petitioner believed the package contained a bomb, but did not know when it would explode, he assisted authorities in moving park patrons away from the direct vicinity of the package and then single-handedly evacuated many individuals from the AT&T tower.

2. In the first four days after the bombing, some members of the media described the security guard who found the bomb as a hero. News organizations contacted AT&T seeking interviews with the security guard who first spotted

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1. Respondents include the corporate owner of the Atlanta Journal-Constitution and certain editors and reporters of the newspaper who were involved in publishing the articles at issue.

the package that contained the bomb. A media relations coordinator employed by AT&T conveyed the media requests to Petitioner and helped with interview arrangements. During that four-day time period, at the request of the Boston Globe, CNN, USA Today, NBC, one local Atlanta television station and the Atlanta Journal-Constitution,[2] Petitioner agreed to participate in ten interviews to discuss the events surrounding the bombing. The interviews consisted of three newspaper interviews and seven television interviews. On the evening of July 27, Petitioner was interviewed by a CNN reporter and by a reporter from the Boston Globe. On July 28, Petitioner was interviewed by another CNN reporter, a reporter for USA Today, a summer intern employed by the Atlanta Journal-Constitution and, after being photographed at the park by the Atlanta Journal-Constitution, a local Atlanta television reporter who was conducting "man-on-the-street" interviews.[3] On July 29, Petitioner participated in a two-question telephone interview on CNN. On the morning of July 30, Petitioner was interviewed by Katie Couric on NBC's Today Show. Thereafter, an unknown NBC reporter and an unknown reporter interviewed Petitioner.[4] Petitioner did not

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2. Despite the fact the Atlanta Journal-Constitution was the newspaper striving to be at the forefront of the worldwide media coverage of the bombing and its aftermath, Petitioner was not mentioned by name in the newspaper on July 27, July 28 or July 29. The first mention of his name in Respondents' newspaper appeared on the morning of July 30, when he was discussed in a short article on page 29.

3. When he approached Petitioner for comment, the local television reporter did not know that Petitioner was the security guard who found the bomb. Immediately after that interview, Petitioner declined another attempt to be interviewed on camera because he had spotted some of his friends in the park and wanted to speak with them.

4. No evidence was submitted by Respondents to establish the substance of these two interviews or whether they were ever broadcast.

initiate, arrange or seek any of the interviews. Petitioner testified that he only gave the interviews to accommodate the desires of his employer and that he never intended to have any influence on any public controversy.

3. During the four-day time period in which Petitioner participated in less than a dozen interviews, he was just one of dozens, if not hundreds, of individuals being interviewed about the bombing and its aftermath. Petitioner's participation in the interviews occurred at a time when international print and broadcast coverage of the bombing was round-the-clock and dominated by interviews of Olympic officials, Olympic participants, government officials at all levels, law enforcement officials at all levels and eyewitnesses to the bombing and its aftermath.[5]

4. On the afternoon of July 30, on the front page of an extra edition of its newspaper, the Atlanta Journal-Constitution publicly identified Petitioner as a suspect in the park bombing with the above-the-fold, banner headline, "FBI suspects 'hero' guard may have planted bomb." In October of 1996, Petitioner was cleared of any involvement in the bombing by the United States Department of Justice. On January 28, 1997, Petitioner filed this action, alleging that Respondents libeled him in the July 30 afternoon article and in nineteen subsequent articles that contained false statements conveying to the reader, among other things, that Petitioner was an individual who was guilty or likely guilty of criminal involvement in the bombing, that Petitioner had a motive for bombing the park, and that Petitioner had an

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5. During the time period between July 27 and July 30, the Atlanta Journal-Constitution published 116 articles covering the bombing, mentioning 351 individuals by name. Out of the 116 articles and the 351 names, Petitioner's name was associated with only three articles and in two of those instances, his name was only used as a byline to a photograph of him.

aberrant personality and a bizarre history.[6] Petitioner does *not* base his libel case on the fact that the Atlanta Journal-Constitution identified him as a suspect or on the fact that it was the first member of the media to so identify him.

5. On February 26, 1999, Petitioner moved for partial summary judgment, asserting that under the definitive test enunciated by this Court in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974) and its progeny, the trial court should find him to be a private defamation plaintiff.[7] Supported by his sworn testimony, the testimony of the AT&T media relations coordinator and the content of his interviews, Petitioner asserted that he was not an all-purpose public figure and was not a limited-purpose public figure because he had never thrust himself into the vortex of a public controversy in a purposeful attempt to influence the outcome of the

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6. The statements alleged by Petitioner to be libelous include, but are not limited to, false statements conveying that Petitioner was like Wayne Williams, who, as the 1982 convicted killer of the missing and murdered children of Atlanta, is known as the perpetrator of a series of the most heinous crimes in the history of this Nation; that Petitioner fit the FBI profile of the lone bomber of Olympic Park; that investigators believed Petitioner planted the bomb; that investigators believed that Petitioner placed the 911 warning call himself; that the bombing was a publicity stunt and Petitioner had a motive to bomb the park because he had sought publicity and press interviews for his actions; that Petitioner was a villain; that the bomber was a fool and Petitioner was a fool; that Petitioner was a bad man to cross on his beat; that Petitioner had a law enforcement reputation as a zealot; that Petitioner had a history of overzealous policing; and that Petitioner had been ordered by a judge to undergo mental health treatment.

7. In Georgia, private defamation plaintiffs must only prove negligent publication of a false and defamatory statement. *Triangle Publications, Inc. v. Chumley*, 253 Ga. 179, 180, 317 S.E.2d 534, 536 (1984). As of 1999, at least thirty-five states had adopted a negligence standard for private defamation plaintiffs. 1 Robert D. Sack, *Sack on Defamation* § 6.1 (3d ed. 1999).

controversy.[8] In opposing the motion, Respondents conceded that Petitioner was not an all-purpose public figure but contended that he was a limited-purpose public figure based on his prominent role in the events *surrounding the bombing* and the fact that he participated in less than a dozen media interviews despite being under no obligation to speak with the press.

6. Respondents failed to come forward with any evidence of the content of two of the ten interviews. In the remaining eight interviews, Petitioner's comments focused almost exclusively on recounting the events surrounding the bombing and his actions after he found the suspicious package. In a few of the interviews, Petitioner also responded to a handful of unsolicited questions posed by reporters about more general matters related to the bombing and, in doing so, Petitioner praised the professionalism of the emergency personnel who responded to the bombing, discussed his law enforcement training, spoke of training given to security personnel regarding suspicious packages, expressed his hope to work in law enforcement in Atlanta after the Olympics, credited other law enforcement personnel and emergency personnel with being the real heroes, and made one comment in one interview praising the members of the public who continued to attend Olympic events to show the bomber that this type of activity would not be tolerated in this world. In the interviews, Petitioner never commented on or advocated a position on the issue of whether the park or any other Olympic venue was safe from further attack.

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8. Petitioner submits that as a subsidiary issue fairly included within the questions presented, this case presents this Court with an opportunity to make clear that before a private individual is deprived of the protections of state law against defamation, the burden of proving public figure status by clear and convincing evidence rests with the party asserting that status as a defense.

7. On October 5, 1999, relying almost exclusively on language from the decisions in *Silvester v. American Broadcasting Cos.*, 839 F.2d 1491 (11th Cir. 1988) and *Waldbaum v. Fairchild Publications, Inc.*, 627 F.2d 1287 (D.C. Cir. 1980), the trial court denied Petitioner's motion and held that Petitioner was a voluntary limited-purpose public figure for purposes of the public controversy over "Olympic Park safety." (App. 40a). The trial court's order also suggested that Petitioner was an "involuntary limited purpose figure." (App. 41a).

The trial court's opinion made clear that Petitioner lost his private figure status because his role in the bombing events made him "almost necessarily . . . someone who was newsworthy" (App. 39a), and because he exercised his First Amendment right to speak about his knowledge of a matter of public interest: "[a] different question would be presented if [Petitioner] had refused comment or spoken only as to the events witnessed" (App. 40a), and "even if [Petitioner's] entry into the controversy was involuntary, 'unless he rejects any role in the debate, he too has invited comment relating to the issues at hand.'" (App. 41a).

8. On November 16, 1999, Petitioner's application for interlocutory appeal of the trial court's order was granted by the Georgia Court of Appeals. Thereafter, in an opinion that was a virtual mirror image of the trial court's order in its reasoning, language and reliance on *Silvester* and *Waldbaum*, the Georgia Court of Appeals affirmed the trial court and held that Petitioner was a voluntary limited-purpose public figure for purposes of the public controversy over Olympic Park safety. Going beyond the trial court's order, the Georgia Court of Appeals relied upon the decision in *Dameron v. Washington Magazine, Inc.*, 779 F.2d 736 (D.C. Cir. 1985) to further hold that in the event the trial court erred in finding that Petitioner was a voluntary limited-purpose public figure, the evidence was "clear and convincing" that Petitioner was an "involuntary limited-purpose public figure." (App. 22a).

In an opinion remarkable for its lack of any meaningful discussion of the public figure analysis of the *Gertz* decision and its failure to even mention, much less discuss, this Court's post-*Gertz* public figure decisions in *Time, Inc. v. Firestone*, 424 U.S. 448 (1976), *Hutchinson v. Proxmire*, 443 U.S. 111 (1979) and *Wolston v. Reader's Digest Ass'n., Inc.*, 443 U.S. 157 (1979), the Georgia Court of Appeals concluded that Petitioner lost his private individual status because he was "a prominent figure in the coverage of the controversy," he did not "reject any role in the public controversy debate," and he agreed "voluntarily" to participate in the media interviews. The decision made it clear that it was Petitioner's "public discussion of the bombing" that rendered him a public figure, including his first-hand factual statements to the media:

> [Petitioner] stated that he had spotted the bag after a group of rowdy, college-aged men had left the park. And he announced on CNN that he had matched one of the men to a composite sketch. These statements gave the impression that police had solid leads and the park was safe.

(App. 19a).

Thus, the decision of the Georgia Court of Appeals establishes the legal principle that factual eyewitnesses to a newsworthy event are converted into voluntary limited-purpose public figures if they agree to media interviews to discuss the facts of the event since eyewitness factual statements always influence to some extent the listener and reader.

In concluding that Petitioner was also, under the same set of facts, an "involuntary limited-purpose public figure," the Georgia Court of Appeals found that Petitioner achieved public figure status because he became involved in a public controversy and affair without his consent or will as the result

of the fact that he "had the misfortune to have a tragedy occur on his watch." (App. 23a). The decision found that Petitioner "played a central, albeit possibly involuntary, role in the controversy" over park safety because:

> [Petitioner] happened to be the security guard on duty at the time of the bombing, happened to be the security guard who found the bomb, and happened to be involved in the evacuation of the public from the area where the bomb was located.

(App. 24a).

Although its opinion quoted from the *Gertz* decision, the Georgia Court of Appeals used ellipses in the opinion to omit the following language, "[h]ypothetically, it may be possible for someone to become a public figure through no purposeful action of his own, but the instances of truly involuntary public figures must be exceedingly rare." (App. 15a).

9. On February 12, 2002, the Georgia Supreme Court denied Petitioner's request for discretionary review of the opinion and judgment of the Georgia Court of Appeals.

10. This Petition for a writ of certiorari followed.

## REASONS FOR GRANTING THE WRIT

The Petition should be granted because the Georgia Court of Appeals' decision conflicts with holdings of this Court in two important ways. *First*, the decision recognizes the classification of an involuntary limited-purpose public figure under which a private individual is converted into a public figure if that person happens to be a central, albeit involuntary, figure in a newsworthy event. That holding is contrary to this Court's decisions in *Gertz* and its progeny that recognize only two classifications of public figures, all-

purpose and voluntary limited-purpose, and that do not permit public figure status to result from mere newsworthiness. As a practical matter, the Georgia Court of Appeals' recognition of an involuntary limited-purpose public figure classification reinstates the public or general concern doctrine of *Rosenbloom v. Metromedia*, 403 U.S. 29 (1971), a doctrine this Court rejected in *Gertz* and has continued to reject in its post-*Gertz* decisions.

*Second*, the Georgia Court of Appeals' decision establishes the legal principle that a private individual who agrees to media requests for interviews as an on-the-record source for first-hand information about a newsworthy event is converted into a voluntary limited-purpose public figure because he voluntarily assumes a position of influence in a public controversy as a result of his participation in the interviews. That holding is contrary to this Court's decisions in *Gertz* and its progeny that prohibit a media defendant charged with defamation from converting, by its own conduct, a private claimant into a public figure and that restrict limited-purpose public figure status to individuals who voluntarily act with an intent to influence or advocate a particular outcome to a public controversy. The Georgia Court of Appeals' holding is speech-restricting: it chills a private individual's exercise of the First Amendment right of free speech and thereby diminishes the ability of the media to inform the public about a newsworthy event. In the absence of clear and convincing evidence of an intent to advocate a particular outcome, voluntary participation in interviews to satisfy inquiring reporters should never serve as a basis for converting a private individual into a public figure.

It has been over twenty years since this Court addressed the constitutional classifications of public and private figures in defamation cases. The media era of the 21st Century is an era of almost unlimited, non-stop, massive media coverage of major events of public interest and concern that involve

private individuals. Review of this case should be granted in order for this Court to decisively foreclose future litigation over the viability of the involuntary public figure classification. Review of this case should be granted in order for this Court to protect the rights of private individuals who agree to media requests to serve as on-the-record sources of first-hand information about newsworthy events. Allowing the Georgia Court of Appeals' broad, open-ended approach to public figure status to stand as authority to be followed by other state and federal courts will spell the death of state defamation laws in cases against media defendants.

## I. The Decision Below Conflicts With Decisions Of This Court That Have Refused To Recognize The Existence Of The Category Of An Involuntary Public Figure.

As acknowledged by the Georgia Court of Appeals, Petitioner was a private individual prior to the park bombing. In addition to holding that Petitioner was converted into a voluntary limited-purpose public figure because he agreed voluntarily to media requests for interviews to discuss his first-hand knowledge of the park bombing, the Georgia Court of Appeals held that under the same facts, Petitioner was also an involuntary limited-purpose public figure. This case presents this Court with the opportunity to clarify for once and for all whether the classification of an involuntary limited-purpose public figure exists as a matter of constitutional defamation law.[9]

In *Gertz*, this Court explicitly recognized only two classifications of public figures: all-purpose and voluntary limited-purpose. *Gertz* did not explicitly recognize the

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9. *See* Nat Stern, *Unresolved Antithesis of the Limited Purpose Public Figure Doctrine*, 33 Hous. L. Rev. 1027, 1102 (1996) ("[T]he very existence of involuntary public figures stands in a kind of limbo; in an appropriate case, the Court should rule either that Gertz meant what is said, or that the Court's post-Gertz trilogy tacitly revoked that category of public figures.").

classification of an involuntary public figure. In writing for the majority, Justice Powell posited, in dictum, the possibility of such a third category, stating "[h]ypothetically, it may be possible for someone to become a public figure through no purposeful action of his own, but the instances of truly involuntary public figures must be exceedingly rare." *Gertz*, 418 U.S. at 345. The question of the existence of this category beyond the hypothetical appears to have been answered in the negative by the fact that this Court's post-*Gertz* decisions in *Firestone*, *Hutchinson* and *Wolston* make no reference to the category of an involuntary public figure. Indeed, *Wolston* specifically makes reference to only "two ways in which a person may become a public figure for purposes of the First Amendment:" — the all-purpose and voluntary limited-purpose designations.[10] *Wolston*, 443 U.S. at 164.

*Wolston* also made clear that the fact that an individual is newsworthy because of involvement or association with a matter that attracts public attention is not sufficient to transform a private individual into a public figure:

> Petitioner's [actions] no doubt were 'newsworthy,' but the simple fact that these events attracted media attention also is not conclusive of the public- figure issue. A private individual is not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts

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10. Prior to the decision in the instant case, no published Georgia case had ever recognized or mentioned the existence of the category of an involuntary public figure. In fact, consistent with *Wolston*, the decisions in *Byers v. Southeastern Newspaper Corp., Inc.*, 161 Ga. App. 717, 719, 288 S.E.2d 698, 700 (1982) and *Hemenway v. Blanchard*, 163 Ga. App. 668, 670, 294 S.E.2d 603, 605 (1982) recognized only two classifications of public figures, all-purpose and voluntary limited-purpose. The decision below failed to make any mention of the *Byers* and *Hemenway* decisions.

> public attention. To accept such reasoning would in effect re-establish the doctrine advanced by the plurality opinion in *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29, 44, 91 S.Ct. 1811, 29 L.Ed.2d 296 (1971), which concluded that the *New York Times* standard should extend to defamatory falsehoods relating to private persons if the statements involved matters of public or general concern. We repudiated this proposition in *Gertz* and in *Firestone*, however, and we reject it again today. A libel defendant must show more than mere newsworthiness to justify application of the demanding burden of *New York Times*. See *Time, Inc. v. Firestone*, 424 U.S., at 454, 96 S.Ct., at 965.

*Wolston*, 443 U.S. at 167-68.[11]

As previously noted, in finding that the classification of an involuntary limited-purpose public figure is a viable category for a plaintiff in a defamation action, the Georgia Court of Appeals ignored the *Gertz* dictum that instances of a "hypothetical" involuntary public figure must be "exceedingly rare." The lower court decision also failed to mention the post-*Gertz* decisions in *Firestone*, *Hutchinson* and *Wolston* and did not discuss the impact of those decisions

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11. A number of lower federal court decisions have also concluded that an involuntary public figure classification does not exist. *Barry v. Time, Inc.*, 584 F. Supp. 1110, 1115 (N.D. Cal. 1984); *Franklin v. Benovolent & Protective Order of Elks*, 97 Cal. App. 3d 915, 930 (1979); *Schultz v. Readers Digest Ass'n.*, 468 F. Supp. 551, 559 (E.D. Mich. 1979) (*Firestone* "forecloses the possibility" of the involuntary limited-purpose public figure status). Similarly, some of our Nation's highest state courts have indirectly rejected the involuntary public figure classification. *E.g.*, *Jones v. Palmer Comm's, Inc.*, 440 N.W.2d 884, 895 n.1 (Iowa 1989); *Burgess v. Reformer Pub. Corp.*, 508 A.2d 1359, 1361 n.4 (Vt. 1986).

on the issue of the existence of the involuntary public figure category.[12]

While ignoring this Court as well as other authorities and commentators who have addressed the involuntary public figure classification,[13] the Georgia Court of Appeals fully embraced the "sheer bad luck doctrine" enunciated in *Dameron v. Washington Magazine, Inc.*, 779 F.2d 736 (D.C. Cir. 1985). The Georgia Court of Appeals described Petitioner as an involuntary public figure because he was a person "who had the misfortune to have a tragedy occur on his watch"

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12. This failure has been described as "not only lazy, but inexcusable when First Amendment rights were at stake." Clay Calvert & Robert D. Richards, *A Pyrrhic Press Victory: Why Holding Richard Jewell is a Public Figure is Wrong and Harms Journalism*, 22 Loy. L.A. Ent. L. Rev. 293, 322 (2002).

13. As one commentator has noted, the "case law and majoritarian view of the commentators correctly view this category as 'not merely 'exceedingly rare' but extinct.'" David A. Elder, *Defamation: A Lawyer's Guide* § 5:8 at 57 (1993). *See also* Gerald G. Ashdown, *Gertz and Firestone: A Study in Constitutional Policy-Making*, 61 Minn. L. Rev. 645, 681 n.175 (1977) (observing that this Court has "eliminated the possibility that a person may become an involuntary public figure"); Mark L. Rosen, *Media Lament — The Rise and Fall of Involuntary Public Figures*, 54 St. John's L. Rev. 487, 502 (1980) (stating that the involuntary public figure classification is "all but extinct"); David L. Wallis, *The Revival of Involuntary Limited-Purpose Public Figures — Dameron v. Washington Magazine, Inc.*, 1987 B.Y.U. L. Rev. 313, 319 (describing *Wolston* as "further evidence of the demise of the involuntary public figure category"); Mark T. Karinja, Comment, *Defamation: Conflict in the Definition of "Public Figure,"* 10 Seton Hall L. Rev. 822, 846 (1980) (observing this Court's "reject[ion] sub silentio" of the involuntary public figure classification); Dale K. Nichols, Note, *The Involuntary Public Figure Class of Gertz v. Robert Welch: Dead or Merely Dormant?*, 14 U. Mich. J.L. Reform 71, 84 (1980) (suggesting that this Court's trilogy of *Firestone*, *Hutchinson*, and *Wolston* have dealt a "death blow" to the involuntary public figure classification).

(App. 23a) and as a result, became "involved in public controversies and affairs without [his] consent or will." (App. 23a). The *Dameron* decision has been recognized as little more than a reformulation of the rejected *Rosenbloom* public or general concern doctrine. *See Wells v. Liddy*, 186 F.3d 505, 539 (4th Cir. 1999) ("The *Dameron* definition of an involuntary public figure, someone who by bad luck is an important figure in a public controversy, runs the risk of returning us to the *Rosenbloom* plurality's conception of defamation law.");[14] David L. Wallis, Note, *The Revival of Involuntary Limited-Purpose Public Figures - Dameron* v. *Washington Magazine, Inc.*, 1987 B.Y.U. L. Rev. 313 (1987) (criticizing the *Dameron* approach as over-inclusive and as a return to *Rosenbloom*). This Court has made it abundantly clear that it is unwilling to reinstate the public or general concern test of *Rosenbloom* as it represents an extension of the *New York Times* test that abridges the legitimate state interest in enforcing a legal remedy for defamatory falsehood injurious to the reputation of a private individual to a degree this Court finds unacceptable. *See Firestone*, 424 U.S. at 454; *Wolston*, 443 U.S. at 167-68.

The Georgia Court of Appeals' standard is arguably broader than the *Dameron* standard, as the opinion did not stop with approval of the sheer bad luck doctrine, but went further to set forth a definition of the involuntary public figure category in the broadest of terms: "the happen to be" test. To this end, the Georgia Court of Appeals held that there was "clear and convincing evidence" that Petitioner was an involuntary limited-purpose public figure because he

14. As the *Wells* decision aptly explains, even if this Court decides to recognize the involuntary public figure category, the *Dameron* "sheer bad luck" standard must be rejected because, as *Gertz* tells us, "involuntary public figures 'must be exceedingly rare,' and, unfortunately, bad luck is relatively common." *Wells*, 186 F.3d at 539. The *Dameron* test for an involuntary limited-purpose public figure would render that category "exceedingly common."

"*happened to be* the security guard on duty at the time of the bombing, *happened to be* the security guard who found the bomb, and *happened to be* involved in the evacuation of the public from the area where the bomb was located." (App. 24a) (emphasis added). This language makes clear that, contrary to this Court's decisions, the opinion below converts all private individuals into involuntary public figures if they happen to be involved in an event of public interest and concern and their involvement happens to make them newsworthy.[15]

Here, the Georgia Court of Appeals converted Petitioner into an involuntary public figure based solely on the fact that Petitioner fulfilled his job responsibilities as a private security guard in the course of being involuntarily involved in a tragic event that captured the attention of the world. In branding Petitioner an involuntary public figure, the Georgia Court of Appeals held that Petitioner lost valuable state protections against defamation and found his reputation at greater risk of defamatory attack as the result of simply doing his job at the time of the bombing. In short, that portion of the Georgia Court of Appeals' decision that holds Petitioner to be an involuntary public figure penalizes Petitioner for doing his job and, in the process, saving many innocent lives. The Georgia Court of Appeals holding conflicts with this Court's decision in *Wolston* that requires a finding that fulfilling his job responsibilities in connection with a newsworthy event provides "no basis whatsoever for concluding that petitioner relinquished to any degree, his interest in the protection of his own name." *Wolston*, 443 U.S. at 168.

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15. Under the Georgia Court of Appeals' test, all private individuals who *happened to be* involved in or associated with the tragic circumstances of the September 11 terrorists' attacks would be involuntary public figures.

The fact that the Georgia Court of Appeals has now joined the ranks of lower courts that have recognized the existence of an involuntary public figure classification beyond the hypothetical underscores the necessity for this Court to now end the debate among lower state and federal courts about the category's existence and its definition by unequivocally rejecting the existence and viability of the category.[16] Unless this Court is prepared to expand the categories of public figures and reverse its heretofore restrictive approach to converting private individuals into public figures, the Petitioner's role in the bombing events and the prominence of that role are insufficient to convert him into a public figure. Whether Petitioner was converted into a voluntary limited-purpose figure by his subsequent

16. The federal appellate courts are clearly in conflict over the question of whether the classification of an involuntary public figure exists beyond the mere hypothetical. Since *Gertz*, it appears that seven circuits have either failed to expressly recognize or have implicitly rejected the classification. *Pendleton v. City of Haverhill*, 156 F.3d 57 (1st Cir. 1998); *Yiamouyiannis v. Consumers Union of U.S., Inc.*, 619 F.2d 932 (2d Cir.), *cert. denied*, 449 U.S. 839 (1980); *Bichler v. Union Bank & Trust Co.*, 715 F.2d 1059 (6th Cir. 1983), *vacated*, 718 F.2d 802 (1983), *on rehearing*, 745 F.2d 1006 (1984); *Littlefield v. Ft. Dodge Messenger*, 614 F.2d 581 (8th Cir. 1980), *cert. denied*, 445 U.S. 945 (1980); *Dworkin v. Hustler Magazine Inc.*, 867 F.2d 1188 (6th Cir 1989), *cert. denied*, 493 U.S. 812 (1989); *Garcia v. Board of Educ. of Socorro Consol. School Dist.*, 777 F.2d 1403 (10th Cir. 1985), *cert. denied*, 479 U.S. 814 (1986); *Silvester v. American Broadcasting, Co.*, 839 F.2d 1491 (11th Cir. 1988). The remaining circuits that do recognize the classification have developed a variety of conflicting theories and factors for determining the constitutional parameters of the category. *Compare Dameron* (defining an involuntary public figure as one who by bad luck is an important figure in a public controversy *and Wells* (creating a six-part involuntary public figure test focusing on whether the claimant was "a central figure during debate over that matter") *with Carson v. Allied News Co.*, 529 F.2d 206 (7th Cir. 1976) (stating "that the wife of a public figure . . . more or less automatically becomes at least a part-time public figure herself").

decision to agree to media requests for interviews to discuss that role is the only proper inquiry in this case.

## II. The Decision Below Conflicts With Decisions Of This Court That Prohibit Those Charged With Defamation From Converting, By Their Own Conduct, A Private Claimant Into A Public Figure.

In *Hutchinson*, this Court held that "those charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure." *Hutchinson*, 443 U.S. at 135.[17] The Georgia Court of Appeals' decision directly conflicts with that holding by allowing the media, by its conduct, to convert a private individual into an on-the-record source and then use that role to convert him into a voluntary limited-purpose public figure.

In reaching its determination that Petitioner was a voluntary limited-purpose public figure, the Georgia Court of Appeals relied upon: (1) the media's coverage of Petitioner's role in discovering the bomb and evacuating park patrons, noting that he had been described as a "media hero"; (2) the number of media interviews granted by Petitioner at the media's request; (3) Petitioner's responses to the questions posed by the media in the interviews; and (4) the extent of the coverage that the media gave to his comments in the interviews. All of these factors are derived from, or determined by, the media's conduct, including that of Respondents' newspaper.[18] The only conduct of Petitioner

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17. *Accord Wolston*, 443 U.S. at 167-68.

18. The Atlanta Journal-Constitution article about Petitioner was published on the morning of July 30 along with photographs of Petitioner taken at the July 28 photo shoot. The newspaper knew that Petitioner was under FBI investigation prior to the time it published its article and photographs on the morning of July 30. In fact, at that time, the newspaper was itself actively engaged in investigating Petitioner.

emphasized by the Georgia Court of Appeals was that he "voluntarily made media appearances" when he was "under no obligation to do any interviews." (App. 20a). Thus, the decision below found that Petitioner relinquished his interest in the protection of his name by agreeing to media requests to be an on-the-record source for first-hand information about the bombing. Under the holding of the Georgia Court of Appeals, the only way that Petitioner could avoid being converted into a voluntary limited-purpose public figure would have been to "reject any role in the public controversy."[19] (App. 21a).

That portion of the Georgia Court of Appeals' decision that holds Petitioner to be a voluntary limited-purpose public figure *penalizes* Petitioner for exercising his First Amendment right of free speech to discuss the bombing while *protecting* Respondents from liability for defamation by allowing them to create their own defense based on Petitioner's agreement to serve as an on-the-record source to assist the media in its discussion of the bombing. The decision of the Georgia Court of Appeals permits the media to solicit a private individual to serve as an on-the-record source for first-hand information about an event of public concern and then turn around and use that person's agreement to cooperate against him.[20] The decision below

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19. Herein lies the ultimate "Catch-22" for Petitioner: if he had rejected any role in the debate and refused the media requests for interviews, not only would the public be deprived of first-hand information about the event, but when his name surfaced as a suspect, his refusal to grant media interviews would undoubtedly have been used against him as being suspicious or indicating he had something to hide.

20. The opinion below, on the issues relating to disclosure by Respondents of their confidential sources (issues not before this Court in this Petition), demonstrates that Respondents have gone to extraordinary lengths to protect their "confidential sources" while aggressively seeking to penalize Petitioner for agreeing to be one of their "on-the-record" sources.

diminishes, rather than enhances, the purposes of the First Amendment as it chills the speech of untold numbers of private individuals involved in or associated with newsworthy events. By chilling a private individual's right of free speech, the decision below also threatens journalists' ability to obtain on-the-record sources of information.[21]

Historically, since *New York Times*, "this Court has sought to define the accommodation required to assure the vigorous debate on public issues that the First Amendment was designed to protect while at the same time affording protection to the reputation of individuals." *Hutchinson*, 443 U.S. at 133-34. Here, the interests to be accommodated exceed the historical, as they also include Petitioner's First Amendment right to disseminate information by agreeing to media requests that he serve as an on-the-record source.[22] Participation in the debate over a public controversy by private individuals such as Petitioner who provide first-hand information about the controversy is essential to insuring not only a vigorous debate, but also an informed debate.

The record establishes that Petitioner participated in less than a dozen media interviews in response to inquiries from reporters requesting his eyewitness account of the park

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21. Two distinguished First Amendment commentators have recently analyzed the Richard Jewell case and urge this Court to grant review in this case and adopt a "Good Samaritan Source" rule shielding private individuals from public figure status "when they do no more than comply with media requests for comments and answer media-posed questions on issues of public concern." Clay Calvert & Robert D. Richards, *A Pyrrhic Press Victory: Why Holding Richard Jewell is a Public Figure is Wrong and Harms Journalism*, 22 Loy. L.A. Ent. L. Rev. 293, 325-26 (2002).

22. As hereinafter discussed, Petitioner does not contend that a private individual who participates in media interviews with an intent to influence or advocate a particular outcome to a public controversy should be immune from public figure status.

bombing and his role in discovering the bomb and assisting in the evacuation of the park. These interviews occurred at a time when the overriding question in the mind of the public was: what happened? Certainly, any public debate over park safety would be rendered meaningless if Petitioner, and the other hundreds of individuals interviewed, had rejected the role of providing information to the public through interviews requested by the media. The public's need to know and the media's right to inform the public about a newsworthy event such as the bombing of Centennial Olympic Park require more than merely reporting the public statements of public officials and law enforcement officials. In order for the public to be fully informed about such events and for the media to completely report on such events, there must be dissemination of information from private citizens who were eyewitnesses or participants.[23]

Any legal doctrine or principle that has a chilling effect upon on-the-record news sources is speech-restricting and should be viewed with disfavor by this Court, particularly when state laws are adequate to fairly protect the media in any defamation claim brought by one of its sources. This Court should encourage private individuals to serve in the role of being on-the-record sources to provide newsworthy information to the public — this Court should never discourage

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23. For a recent example of the public's need to be informed by private individuals who happen to be involved in a matter that attracts public attention, this Court need look no further into the past than to the media coverage of the tragic events of September 11 and their aftermath. Unquestionably, the public debate over those tragic events was facilitated by information obtained from the interviews of hundreds, if not thousands, of private individuals who were eyewitnesses, participants, victims or the friends and family of victims. From those interviews, among other things, the public was informed about what happened; about the response of law enforcement and emergency personnel to the events and their professionalism and training; and about the reaction to the tragedy. It is this exact type of first-hand information about the park bombing that Petitioner provided to the public in response to questions posed by the reporters in media interviews.

such service by sanctioning a decision that demands that a private individual reject any role in the public debate in order to avoid public figure status. Review of the Georgia Court of Appeals' decision is necessary in order for this Court to soundly reject a legal principle that penalizes private individuals who agree to serve as on-the-record news sources by permitting the media to successfully assert that such role converted them to public figure status.

## III. The Decision Below Conflicts With Decisions Of This Court That Restrict The Classification Of Voluntary Limited-Purpose Public Figure To Individuals Who Voluntarily Thrust Themselves Into A Public Controversy With An Intent To Influence Or Advocate A Particular View.

As stated, Petitioner urges this Court to reject any definition of a public figure category that chills the speech of on-the-record news sources by penalizing the sources for agreeing to provide first-hand information essential to an informed public debate. In adopting such a definition, the Georgia Court of Appeals' decision conflicts with the decisions of this Court in *Gertz*, *Firestone*, *Hutchinson* and *Wolston* that protect a private individual who agrees voluntarily to media interviews by allowing him to maintain the status of a private defamation plaintiff unless the individual agrees to participate in the interviews in an attempt to influence or advocate a particular outcome to a public controversy. The definitive test to determine whether a private individual has been converted into a voluntary limited-purpose public figure was initially set forth in *Gertz*:

> More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved.

*Gertz*, 418 U.S. at 345.

In the three post-*Gertz* decisions of *Firestone*, *Hutchinson* and *Wolston*, this Court has consistently adhered to a restrictive approach to voluntary limited-purpose public figure status, reversing the lower courts and holding that the plaintiffs were private individuals rather than limited-purpose public figures.[24] As it failed to do in its discussion of the category of an involuntary public figure, the Georgia Court of Appeals made no attempt to discuss or distinguish the holdings and language of *Firestone*, *Hutchinson* or *Wolston* in reaching its conclusion that Petitioner was a voluntary limited-purpose public figure.[25]

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24. *See generally* Rodney A. Smolla, *Law of Defamation* § 2.08, at 2-23 (1993) ("In the aftermath of *Gertz*, the Supreme Court undertook a series of refinements to the 'limited' public figure, consistently giving the term an application more restricted in scope than the simple word 'public' might suggest as a matter of popular colloquial usage.").

25. In an omission that defies reasonable judicial explanation, the Georgia Court of Appeals also did not cite or attempt to distinguish its decision in *Hemenway v. Blanchard*, 163 Ga. App. 668, 294 S.E.2d 603 (1982), its own controlling authority on the category of a voluntary limited-purpose public figure. Consistent with *Gertz* and its progeny, the *Hemenway* decision requires the court to focus on intent to influence. All Georgia precedent since *Hemenway* has been consistent with *Hemenway*'s focus on intent to influence the particular controversy as the controlling test. *See Woy v. Turner*, 573 F. Supp. 35, 38 (N.D. Ga. 1983) (a sports agent used the media on a "regular basis in an attempt to influence the outcome of the contractual dispute"); *Finkelstein v. Albany Herald Pub. Co.*, 195 Ga. App. 95, 97, 392 S.E.2d 559, 561 (1990) (an attorney "had voluntarily and deliberately thrust himself into the forefront of the controversy" respecting the district attorney's office, *admitting* that he made an appearance on a television program for the purpose of discussing problems in the district attorney's office); *Shannon v. Rado*, 200 Ga. App. 495, 496, 408 S.E.2d 441, 443 (1991) (plaintiff's "nationwide consumer advocacy" campaign "clearly sought publicity in an attempt to influence the outcome of the controversy").

Significantly, in *Firestone*, this Court stated that holding press conferences to satisfy inquiring reporters does not *per se* convert one into a public figure in the absence of an intent to influence the resolution of a public controversy — an intent which this Court also noted could not be assumed from the mere fact that the individual participated in the press conferences:

> [W]e [do not] think the fact that respondent may have held a few press conferences during the divorce proceedings in an attempt to satisfy inquiring reporters converts her into a 'public figure.' Such interviews should have had no effect upon the merits of the legal dispute between respondent and her husband or the outcome of the trial, and we do not think it can be assumed that any such purpose was intended. Moreover, there is no indication that she sought to use the press conferences as a vehicle by which to thrust herself to the forefront of some unrelated controversy in order to influence its resolution.

*Firestone*, 424 U.S. at 454-55 n.3 (citing *Gertz*, 418 U.S. at 323).

This Court's subsequent decision in *Wolston* made it abundantly clear that the intent to influence test of *Gertz* is the equivalent of a definition that states that a private individual does not become a public figure unless he voluntarily engages the public's attention with an intent to advocate a particular view. Justice Blackmun fully understood the restrictive limited-purpose public figure test upheld by the majority in *Wolston* when he described it in his concurring opinion:

> I agree that petitioner is not a 'public figure' for purposes of this case. The Court reaches this conclusion by reasoning that a prospective public

> figure must enter a controversy 'in an attempt to influence the resolution of the issues involved,' . . . and that petitioner failed to act in that manner purposefully here. The Court seems to hold, in other words, that a person becomes a limited-issue public figure only if he literally or figuratively 'mounts a rostrum' to advocate a particular view. I see no need to adopt so restrictive a definition of 'public figure' . . .

*Wolston*, 443 U.S. at 169-70 (Blackmun, J., concurring).

Contrary to this Court's restrictive definition, the Georgia Court of Appeals held that the fact that Petitioner "voluntarily made media appearances" when he was "under no obligation to do any interviews" was sufficient to convert him into a voluntary limited-purpose public figure. (App. 20a). Relying almost exclusively on selective language from the Eleventh Circuit's decision in *Silvester* and the D.C. Circuit's decision in *Waldbaum*, the Georgia Court of Appeals adopted an open-ended test for the category of voluntary limited-purpose figure, stating: "It is sufficient . . . that [Jewell] voluntarily engaged in a course that was bound to invite attention and comment." (App. 21a). The only voluntary course taken by Petitioner was his agreement to be interviewed as an on-the-record source of information for the media.

In *Wolston*, this Court repudiated a "course of conduct" approach to public figure status and an exact holding by the D.C. Court of Appeals ("by refusing to comply with the subpoena, petitioner 'stepped center front into the spotlight focused on the investigation of Soviet espionage.' In short, by his voluntary action he invited attention and comment in connection with the public questions")[26] was rejected and reversed in *Wolston* ("We do not agree with . . . the lower

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26. *Wolston*, 443 U.S. at 165 (quoting *Wolston v. Reader's Digest Ass'n., Inc.*, 578 F.2d 427, 431 (D.C. Cir. 1978)).

courts that petitioner can be classed as such a limited-purpose public figure").[27]

In its open-ended analysis, the Georgia Court of Appeals focused on "the extensive media coverage [Petitioner] received as the individual who discovered the bomb and helped evacuate the public" (App. 18a), the number of interviews Petitioner granted and the extent of the media coverage of his comments. The Georgia Court of Appeals concluded that these factors would reveal to an objective, reasonable person that Petitioner "*would play* or was seeking to play a major role in determining the outcome of the controversy" over park safety. (App. 20a) (emphasis added).

The Georgia Court of Appeals' open-ended definition[28] of a voluntary limited-purpose public figure improperly de-emphasizes the intent of the individual and focuses instead on how much coverage the media gave the individual and the impact of that media-generated publicity. The test adopted by the Georgia Court of Appeals conflicts with this Court's test by making it irrelevant whether Petitioner engaged in the voluntary conduct with the intent to advocate a particular outcome to a public controversy. The Georgia Court of Appeals' open-ended definition converts Petitioner into a

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27. *Wolston*, 443 U.S. at 166.

28. An excellent example of how the results as to public figure status are quite different under an open-ended approach and this Court's *Gertz* and post-*Gertz* restrictive approach is found in two cases involving the same plaintiff with different results. *Compare Foretich v. Advance Magazine Publishers*, 765 F. Supp. 1099, 1107-08 (D.D.C. 1991) (finding *Waldbaum* criteria dictated public figure status on the ground that plaintiff was a "central figure" in a public dispute and her defensive response to the controversy was "a course of conduct that was likely to attract substantial attention") *with Foretich v. Capital Cities/ABC, Inc.*, 37 F.3d 1541, 1554 (4th Cir. 1994) (finding the defendant did not meet its burden of proving public figure status under the "relatively stringent" test used by that circuit).

public figure if any of his comments or the coverage of his comments could reasonably be expected to influence the public, including comments conveying first-hand factual information:

> [Petitioner] stated that he had spotted the bag after a group of rowdy, college-aged men had left the park. And he announced on CNN that he had matched one of the men to a composite sketch. These statements gave the impression that police had solid leads and the park was safe.

(App. 19a).

Under the Georgia Court of Appeals' definition of a voluntary limited-purpose public figure, there is no distinction between speech intended to inform and speech intended to advocate. All speech, including eyewitness factual statements, makes an impression on the listener or reader. Thus, all speech, including eyewitness factual statements, can be interpreted as being influential. Under the Georgia Court of Appeals' open-ended definition, from the moment Petitioner spotted the package and helped evacuate park patrons from the vicinity of the blast, he was doomed to voluntary public figure status if he made any comments whatsoever about the events. It is difficult to envision a more speech-restricting legal principle or one more offensive to an individual's First Amendment right of free speech.

Under the restrictive approach followed by this Court, it is clear that Petitioner did not lose his private figure status — he never sought to influence or advocate a particular outcome to the public controversy over park safety. Petitioner's lack of intent to advocate is demonstrated by the following factors: (1) Petitioner did not seek out the media for the interviews; (2) the media sought the interviews with Petitioner because he was the security guard who found the bomb (as opposed to seeking interviews with him to discuss

his views on park safety); (3) the interviews of Petitioner were dominated by his discussion of eyewitness information; (4) the very limited information Petitioner imparted, beyond strictly eyewitness information, was in response to unsolicited questions posed by reporters and were Petitioner's personal observations; and (5) Petitioner's unrebutted testimony that he did not agree to the interviews with an intent to influence the public on any issue. Under its open-ended approach, the Georgia Court of Appeals gave little or no weight to the above factors that established Petitioner's lack of any actual intent to advocate a particular outcome. Under its open-ended approach, the Georgia Court of Appeals was able to discern that an intent was "revealed" based on the prominence of Petitioner in the event, the number of interviews he gave and the fact that coverage of his comments would make an impression on the listeners and readers — in short, an assumption of intent by the lower court that directly conflicts with the holding in *Wolston* and is not permitted under *Firestone*.

When public figure status is asserted by a media defendant based on a private individual's contacts with the press, the inquiry under *Gertz* and its progeny is simple: did the individual seek to use the press contacts as a vehicle by which to thrust himself to the forefront of a public controversy in order to advocate a particular view? While Justice Blackmun did not see the need in *Wolston* to adopt "so restrictive a definition," this case demonstrates the necessity for this Court to grant review and reaffirm its restrictive approach to public figure status in order to draw the line between speech intended to inform and speech intended to advocate. The restrictive definition protects a private individual's legitimate exercise of the First Amendment right to participate in interviews requested by the media to disseminate first-hand information about a newsworthy event in response to questions posed by the media.

Adherence to a restrictive approach to public figure status is essential in view of the realities of the media era of the 21st Century — an era of instant worldwide communication where access to literally a world of information is only the touch of a home computer keyboard away; where local television stations and the major television networks compete against ever-increasing numbers of cable channels, satellite channels and pay-per-view channels; where "all-news" channels broadcast 24-hours a day; where television and the Internet blend together in interactive news channels and almost every major newspaper operates, or is affiliated with, an Internet website. Never before in the history of this country have members of the media faced the pressure of filling virtually unlimited hours of airtime and column inches with new and interesting faces and new and interesting stories in such a highly competitive media environment. Private individuals connected with almost any event deemed by the media to have some measure of news or entertainment value are increasingly finding themselves the subjects of press coverage and media requests for interviews as members of the media struggle to find different faces, different stories and different angles to existing stories.

In the media era of the 21st Century, this Court should encourage those private individuals to step forward and exercise their First Amendment right to inform the public without the fear that in so doing, they will be deemed to have relinquished, to any degree, their interest in the protection of their own name. Review and reversal of the Georgia Court of Appeal's decision is necessary so that this Court does not sanction the legal doctrine that an individual who is suddenly and involuntarily thrust as a key figure in a public event must censor his comments and reject any role in a public discussion of the event upon pain of being effectively stripped of his ability to vindicate his reputation by reliance on state law protections against defamation.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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